

PLANNING COMMISSION MINUTES

April 5, 2000

CALL TO ORDER:

Chairman Dan Maks called the meeting to order at 7:00 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

ROLL CALL:

Present were Chairman Dan Maks, Planning Commissioners Vlad Voytilla, Eric Johansen, Betty Bode, Chuck Heckman, Tom Wolch and Sharon Dunham.

Senior Planner Steven Sparks, AICP, Assistant City Attorney Ted Naemura and Recording Secretary Sandra Pearson represented staff.

The meeting was called to order by Chairman Maks, who presented the format for the meeting.

VISITORS:

Chairman Maks asked if there were any visitors in the audience wishing to address the Commission on any non-agenda issue or item. There were none.

NEW BUSINESS:

PUBLIC HEARING:

Chairman Maks opened the Public Hearing and read the format for Public Hearings. There were no disqualifications of the Planning Commission members. No one in the audience challenged the right of any Commissioner to hear any of the agenda items, to participate in the hearing or requested that the hearing be postponed to a later date. He asked if there were any ex parte contact, conflict of interest or disqualifications in any of the hearings on the agenda. There was no response

A. TA 99-00015 – APPLICATION SUBMITTALS

This City-initiated Development Code text amendment will, if approved, standardize application submittal requirements and add a provision for the enforcement of conditions of approval. The proposed amendments will affect all development applications and all properties within the City of Beaverton.

1 Senior Planner Steven Sparks presented the Staff Report and explained the text
2 amendment to standardize the application submittal requirements in Chapter 40 of
3 the Development Code. Noting that the present Development Code has a very
4 wide-ranging format for application submittals, he maintained that standardization
5 of the format would allow staff to provide uniform direction to applicants. He
6 advised that currently the Development Code lists very specifically what is
7 required to be submitted for design review applications, and without a text
8 amendment, staff has no ability to waive any submittal requirement if warranted
9 by the type of development proposal. The only method to waive submittal
10 requirements under the current code is to do a text amendment. He provided the
11 example of the City Park Expansion Project, which required a design review, and
12 one of the submittal requirements provides for building elevations. Pointing out
13 that this necessitated doing building elevations for the park, he emphasized that
14 this was an unnecessary cost for the City of Beaverton, as it would be for an
15 applicant proposing a similar project, such as a parking lot. He proposed that this
16 amendment would allow greater flexibility to respond to unique situations with
17 applications, some of which may not necessitate all of the requirements currently
18 listed in the code.

19
20 Mr. Sparks mentioned that each application submittal form for each specific type
21 of applications contains lists of standard application materials, such as site plans,
22 elevations, vicinity maps, etc. He added that there are extensive lists of other
23 requirements, including geotechnical reports, traffic reports, environmental
24 impact statements, tree preservation reports, etc., which may not be essential for
25 every type of application. He explained that by meeting with an applicant prior to
26 their submittal of their application, it will be possible to outline which documents
27 are necessary for submittal, adding that this will provide a more flexible and
28 effective process. He emphasized that there is no current uniform requirement in
29 the Development Code providing for compliance with a staff request outlined in
30 the pre-application process. Noting that at this time, staff is only authorized to
31 advise an applicant, he stressed the importance of a provision requiring
32 compliance with pre-application requests. He offered to respond to any questions
33 at this time.

34
35 On question, Mr. Sparks informed Commissioner Dunham that although this
36 particular text amendment does not, the remaining three text amendments being
37 considered this evening do involve a Measure 56 Notice.

38
39 Commissioner Dunham referred to page 1 of 33, and expressed her approval of
40 the amendment in Section 10.60.1.A. providing that conditions shall be fulfilled
41 within the time limitations set forth and if no time is specified, within a period of
42 **two calendar years**, rather than "reasonable time". She also referred to Section
43 10.60.B., specifically the reference to previous development action, and requested
44 clarification of whether this indicates that if this concerns a subsequent
45 application by an applicant, their previous development can be denied.
46

1 Advising Commissioner Dunham that this is not the intent, Mr. Sparks explained
2 that this is a standard development requirement, at least within Washington
3 County, and provided an example illustrating the effect of this requirement: if a
4 developer constructs a townhouse development and does not fulfill the conditions
5 of approval, a future proposal by the same developer will not be approved until
6 the conditions of approval from the prior application have been fulfilled. If these
7 conditions are met within the 120 period of the subsequent application, the City of
8 Beaverton will proceed accordingly with the subsequent application process.

9

10 Observing that she understands this process, Commissioner Dunham pointed out
11 that a one-time applicant would not be affected by this requirement.

12

13 Mr. Sparks verified that Commissioner Dunham is correct, noting that under the
14 current code, if he were to construct some row houses within the City of
15 Beaverton, and did not fulfill his obligations, he would not be affected as long as
16 he never proposed another project in this jurisdiction. He added that in this event,
17 the Code Enforcement process would attempt to fulfill these obligations, and that
18 any attempt to obtain further permits on these same row houses would require the
19 fulfillment of the conditions of approval for the original project.

20

21 Chairman Maks commented that if a fly-by-night construction does not fulfill the
22 conditions of approval, it becomes the responsibility of Code Enforcement,
23 adding that it is not expected that a company who does not follow through the
24 first time will operate any differently in the future.

25

26 Commissioner Dunham assured Chairman Maks that she is not disputing this
27 provision, adding that she thinks it is a great idea, although she has some
28 concerns.

29

30 Mr. Sparks explained that as current development occurs, there are certain criteria
31 to ensure that your obligations will be fulfilled, and that a final inspection will not
32 be completed unless this has been done. He described a typical situation in which
33 landscaping dies, and this landscaping needs to be maintained, or replaced, if
34 necessary, adding that the existence of a sprinkler system is ineffective if it is not
35 utilized, and that would require remedial action.

36

37 Chairman Maks suggested that a good example would be the mitigation of
38 wetlands, with native plants, on site and/or mitigation off-site that never gets
39 done.

40

41 Commissioner Johansen recalled a prior situation in which a citizen had testified
42 that an applicant had not followed through on some of his conditions of approval
43 on a previous project. He noted that he had been informed that this involved a
44 previous development application and could not be discussed at that time.

45

1 Mr. Sparks clarified that progress has been made and this text amendment will
2 resolve that particular situation.

3

4 Observing that under the current regulations, a previous development application
5 can not be discussed in this situation, Chairman Maks assured Commissioner
6 Johansen that the adoption of this text amendment would allow for this.

7

8 Commissioner Dunham referred to pages 4 through 9 of 33, specifically Section
9 40.10.15.2.B. regarding Type II Actions, and Section 40.10.15.3.B. regarding
10 Type III Actions, and pages 21 through 22 of 33, specifically the solar access
11 permit application process. She expressed her approval of the deletion of this
12 enormous amount of verbiage, as long as it does not necessitate codification. She
13 referred to page 10 of 33.

14

15 Chairman Maks advised Commissioner Dunham that counsel has a comment at
16 this time.

17

18 Assistant City Attorney Naemura brought attention to Section 10.60.B.,
19 requesting that Mr. Sparks elucidate the following phrase: "...applicant has failed
20 to fulfill conditions of approval imposed on any previous development action and
21 a determination that such a decision would encourage compliance or is necessary
22 to protect the public from future noncompliance."

23

24 Mr. Sparks clarified that two determinations must be made in this case, as
25 follows: 1) that an applicant has failed to fulfill his prior condition obligations;
26 and 2) that the decision to make that determination that conditions have not been
27 fulfilled and that the denial will either encourage compliance with the original
28 conditions, or that the denial is necessary to protect the public from future non-
29 compliance.

30

31 Mr. Naemura questioned whether this intent would be reflected if it referred to not
32 such a decision but to a finding of non-compliance.

33

34 Mr. Sparks agreed with Mr. Naemura that a finding of non-compliance should
35 serve the same purpose, suggesting that this section refer to "finding", rather than
36 "determination".

37

38 Mr. Naemura noted that he prefers the term determination, which imposes
39 obligation to review and make a judgment. He suggested that rather than the term
40 decision, which could refer to a present decision under review or a past decision
41 under scrutiny, he would include the words "finding of non-compliance".

42

43 Observing that Mr. Naemura attended law school in order to qualify to understand
44 situations such as this, Chairman Maks requested that he restate what he is
45 requesting.

46

1 Mr. Naemura advised Chairman Maks that the sentence should read as follows:
2 "...and a determination that such a ~~decision~~ **finding of non-compliance** would
3 encourage compliance or is necessary to protect the public..."

4
5 Commissioner Heckman expressed his opinion that the phrase "finding of non-
6 compliance would encourage compliance..." sounds cumbersome.

7
8 Chairman Maks assured Commissioner Heckman that counsel would attempt to
9 improve this phrase while the discussion is continued.

10
11 Observing that this is a matter of process, Commissioner Bode questioned why
12 any occupancy permit would be issue if compliance has not been fulfilled.

13
14 Chairman Maks reminded Commissioner Bode that non-compliance could occur
15 at a later time, as landscaping dies and it is not replaced.

16
17 Commissioner Bode discussed the example of the construction of the row houses,
18 suggesting that all of the landscaping is complete, at which time the developer
19 intends to sell the row houses, for which he needs approval. She estimated that
20 50% of all landscaping dies eventually, and questioned whether this developer is
21 responsible for this landscaping forever.

22
23 Mr. Sparks informed Commissioner Bode that the landscaping becomes the
24 responsibility of the individual homeowner or the developer, whoever owns it at
25 that particular time.

26
27 Observing that Commissioner Bode has not served on the Commission as long as
28 most of the others, Chairman Maks offered to clarify this situation for her.

29
30 Commissioner Bode emphasized that not all of her trees have died yet.

31
32 Observing that in the event of a Tree Preservation Plan along with a Conditional
33 Use Permit or a Planned Unit Development, Chairman Maks explained to
34 Commissioner Bode that although the new owners are living in the home,
35 provisions are made to require that the developer assure that this landscaping is
36 maintained for a certain time period. He emphasized that the bottom line is that if
37 something happens and the developer fails to take action, he has, in effect, not
38 followed through with the original condition.

39
40 Chairman Maks explained further that it is sometimes necessary to mitigate a
41 wetland off-site at a later time.

42
43 Commissioner Bode questioned why this mitigation would not be done at the
44 time.

45

1 Chairman Maks informed Commissioner Bode that often it involves a discussion
2 that the professional mitigation can be done off-site.

3
4 Commissioner Voytilla explained that very often developer's conditions of
5 approval provide for street trees in a subdivision, noting that realistically several
6 years may elapse before homes are completed and streets are constructed, adding
7 that by that time, the developer may no longer be available.

8
9 Chairman Maks commented that the season of the year is also a factor.

10
11 Commissioner Voytilla confirmed that the season also has an affect on the
12 landscaping issue, emphasizing that depending upon the size of the subdivision,
13 two or three years is not an unreasonable amount of time before the homes are
14 fully constructed and street trees are feasible. He commented that another
15 component involves the development financial lending situation, stating that often
16 18 months to two years may go by before street trees become an issue.

17
18 Observing that this generally occurs in the large developments involving several
19 phases, Mr. Sparks emphasized that although conditions are made, sometimes it
20 becomes prudent to make exceptions to these conditions. He mentioned the new
21 Southridge High School, as an example, noting that they had been required to
22 install a stop light prior to occupancy. The inspections were necessary, and a
23 decision was made at that time to issue those final inspections prior to the
24 fulfillment of all of the applicant's conditions of approval. Noting that the City of
25 Beaverton has a good relationship with both the developer and the school district,
26 he advised that it was determined that it would be safe to assume they would
27 fulfill all remaining conditions of approval.

28
29 Chairman Maks stressed that sometimes people are not perfect and sometimes
30 they miss things, too, adding that he is aware of several developments within the
31 last few years in which the HVAC was not screened, as required.

32
33 Commissioner Heckman questioned who would actually be responsible to track
34 these developments to make sure that these obligations are met, adding that he has
35 had a lot of experience with this.

36
37 Mr. Sparks informed Commissioner Heckman that this tracking falls within the
38 responsibility of the staff, adding that he regrets to admit that unfortunately
39 sometimes there is not sufficient staff available to make certain that nothing gets
40 missed before the occupancy permit is issued. He emphasized that staff is aware
41 of which projects these are and who the developer is and that they keep records
42 and take action when necessary.

43
44 Observing that he has a profound interest in a specific development,
45 Commissioner Heckman mentioned that a developer had removed approximately
46 100 trees that were supposed to have been preserved. He added that the area has

1 never been restored and to his knowledge this individual has never made any
2 payment for the loss of these trees or the destruction he caused in this area of
3 significant natural resource. He added that another small developer within that
4 same large development removed a large amount of trees which the Board of
5 Design Review had required be retained and preserved, noting that although the
6 owners had attempted to retaliate, he had got off scot-free. He commented that he
7 feels this is one of staff's greatest actions, repeating his concern with who would
8 actually track these projects for compliance.

9

10 Mr. Sparks assured Commissioner Heckman that staff would track these
11 occurrences to the best of their ability, adding that it is hoped that future
12 budgeting will authorize adequate staff to make this possible.

13

14 Commissioner Heckman described this amendment as the "biggest stick" he has
15 seen to provide incentive for a developer to fulfill his obligations.

16

17 Expressing her agreement with Commissioner Heckman, Commissioner Dunham
18 reiterated that this issue involves an element of enforcement and questioned
19 whether this "big stick" should be located in Section 10.65, within the
20 enforcement section.

21

22 Mr. Sparks expressed his opinion that this issue does belong within the
23 Conditions of Approval, adding that Section 10.65 could include a reference to
24 this Section 10.60.B.

25

26 Commissioner Dunham referred to page 10 of 33, noting her concern with the
27 approval criteria listed in C(1). She mentioned that consideration of property
28 owners in the surrounding areas include those who are perpendicularly across the
29 street, and questioned whether C(2) relates to a Planning Commission Public
30 Hearing, but not in this particular context.

31

32 Mr. Sparks emphasized that the key word in this situation is "abutting", noting
33 that by staff's definitions, this means "contiguous". On a flexible setback for an
34 individual lot, signatures of the abutting property owners would need to be
35 provided. If this is demonstrated, it is necessary to then meet the minimum
36 standards specified in 20.05.50.3.D., as well as the requirements of this ordinance.
37 If the abutting neighbors' signatures were not provided, the Planning
38 Commissioner makes the determination of whether the minimum standards are
39 being met (the requirements of the code), at which point abutting is expanded to
40 define as properties directly across the street from the development.

41

42 On question, Mr. Sparks informed Commissioner Dunham that there is an
43 expansion.

44

45 Commissioner Dunham questioned whether this expansion is necessary if the
46 signatures are obtained, and Mr. Sparks informed her that it is not.

1
2 Commissioner Dunham informed Mr. Sparks that he had clarified this issue for
3 her. She referred to the paragraph 1 of page 18 of 33, requesting the following
4 correction: "...the final platting of all stages be greater ~~then~~ than five years..."

5
6 Commissioner Dunham referred to pages 23 through 25 of 33, requesting some
7 examples of mobile uses, streetside sales – mobile, streetside sales – not mobile,
8 around the Beaverton area.

9
10 Mr. Sparks described a streetside sales - mobile use to be an ice cream truck or
11 the taco truck on Allen Boulevard; streetside sales – not mobile could be the
12 individual selling strawberries off of his pickup truck on Tualatin Valley
13 Highway; temporary buildings would be construction offices; and temporary
14 building occupancy could be a 100,000 square foot office building, with the
15 bottom floors ready for occupancy prior to the other floors, which may be granted
16 to generate revenue for the developer.

17
18 Commissioner Dunham observed that she had wondered about those trucks on
19 Allen Boulevard and Hall Boulevard and what specific code they would fall
20 under. She referred to page 26 of 33, asking whether people other than an owner
21 or a representative of an owner could initiate a text amendment.

22
23 Mr. Sparks agreed that there should be a provision to include the City, the Mayor,
24 the Planning Commission and the Board of Design Review.

25
26 Commissioner Dunham commented that she believes that this language appears at
27 another location.

28
29 Mr. Sparks agreed, and advised that he would include the Mayor, the City Council
30 and City Boards and Commissions.

31
32 Commissioner Dunham thanked Mr. Sparks, noting that the current language
33 appears a little exclusionary.

34
35 Mr. Sparks pointed out that he would also amend Section 40.70.15.B., as follows:
36 "Applications for text amendments shall be made by the ~~owner of the affected~~
37 ~~property, or the owner's authorized agent~~ Mayor, City Council, City Boards
38 and Commissions and interested citizens, on a form..."

39
40 On question, Mr. Sparks informed Chairman Maks that this amendment would
41 allow a citizen to submit an application for a text amendment.
42 Chairman Maks expressed his opinion that this adequately covers this issue.

43
44 Mr. Naemura suggested that rather than attempting to duplicate the language out
45 of the section, it might be a good idea to use only the pronoun "applicant" or
46 "applicants".

1
2 Commissioner Dunham observed that this would be universally applicable.

3
4 Chairman Maks expressed approval of this suggestion.

5
6 Mr. Naemura suggested that this would also result in fewer changes if an
7 amendment were necessary at a later time.

8
9 Chairman Maks discussed a prior text amendment initiated by the Beaverton
10 School District providing for storage in vehicles.

11
12 Mr. Sparks noted that he had suggested "interested party".

13
14 Commissioner Dunham referred to page 27 of 33, Section 32.2, questioning the
15 availability of a better term than "regular" variance, adding that she understands
16 the intent.

17
18 Mr. Sparks observed that four different kinds of variances are defined within the
19 code, including: 1) design variance; 2) sign variance; 3) administrative variance;
20 and, for lack of a better word, 4) regular variance. He assured Commissioner
21 Dunham that this would be changed within the next few months.

22
23 Commissioner Johansen mentioned the information that an applicant is required
24 to provide, noting that he had heard remarks indicating that these requirements do
25 not appear to be universal.

26
27 Mr. Sparks explained that comparing similar developments is actually very
28 difficult, referring to two five-acre developments of 40 town homes on the same
29 parcel, with the first developer being required to provide a traffic study, while the
30 second is not, because the traffic study had already been completed. He noted
31 that it might be required that an updated, and less rigorous (and likely less
32 expensive), traffic report be provided. He identified that this amendment will
33 provide a much greater flexibility to be fair with an applicant, in terms of any
34 studies that may have been recently completed and may otherwise have been
35 required by that particular applicant.

36
37 Commissioner Johansen stated that it is his assumption that the financial
38 feasibility reports for past PUD's could not have been overridden by more flexible
39 requirements.

40
41 Mr. Sparks agreed with Commissioner Johansen, noting that for consistency
42 within the code, it is preferable to avoid including provisions such as this.
43 Although he was unable to provide a specific example at this time, he commented
44 that it is possible that in the future an economic feasibility report may not be
45 required for a PUD. He explained that while a requirement would not disappear,
46 staff would merely have some flexibility in applying the requirement.

1 Commissioner Johansen mentioned that this could also apply to a traffic study –
2 language would specify what type of a traffic study is required for what situation.

3
4 Chairman Maks observed that the option is still available within that text for the
5 engineer to waive this requirement.

6
7 Commissioner Johansen emphasized that this does not supercede the requirement,
8 which remains in the code.

9
10 Mr. Sparks clarified that if it exists within the code, it is required, although a
11 traffic report and what is required in this traffic report is defined – it does not
12 define when it is triggered. A traffic report is not necessarily triggered by a
13 design review, although a specific type of design review may trigger a traffic
14 report, at which point the obligation will be fulfilled.

15
16 Commissioner Heckman referred to paragraph 1 of page 13 of 33, questioning
17 what is meant by “front yard parking”, and Mr. Sparks explained that in the City
18 of Beaverton, residents are allowed to park in the front yard only in the driveway
19 leading to the garage. Any other parking within the yard is only allowed in the
20 side yard, to the side of the unit, with the consent of the neighbors on that side.

21
22 Commissioner Heckman discussed a situation where the distance is 20 feet from
23 the edge of the driveway to the edge of the property, adding that there is a 5 foot
24 setback, questioning whether that remaining 15 feet still requires the consent of
25 the neighbors.

26
27 Mr. Sparks informed Commissioner Heckman that this situation still requires the
28 consent of the neighbors, adding that this provision extends up to the side yard
29 and includes anywhere off of the apron. He confirmed that this is not a common
30 occurrence, adding that he is not aware of any such application in the past.

31
32 Commissioner Voytilla responded to Commissioner Johansen’s question and
33 referred to page 3 of the staff narrative. He noted that he does not possess copies
34 of the application forms referred to, and expressed concern that the standards are
35 clear and objective.

36
37 Mr. Sparks observed that the clear and objective standards statutes apply to
38 conditions of approval, adding when conditions are required there must be an
39 accounting of rationale for these conditions. Noting that it is necessary to provide
40 some sort of valid and applicable evidence that would necessitate a certain
41 requirement, he discussed the anticipated result of this proposed pre-application
42 process. He emphasized that many of these issues should be resolved at the start
43 of the application process, rather than the lengthy process of review by the
44 Planning Commission or Board of Design Review. He pointed out that some
45 criteria may not be met at this time simply because sufficient information is not
46 available for this determination, adding that he hopes to avoid this in the future.

1
2 Commissioner Voytilla expressed his concern that in the past there have been
3 specific situations in which an applicant submits an application based upon
4 certain criteria requirements, at which point additional criteria was included.
5 Observing that he understands the attempt to simplify the process and allow more
6 discretion for staff, he noted that he visualizes a great potential for abuse.

7
8 Referring to this as the “multiple bite of the apple” argument, Mr. Sparks agreed
9 and assured Commissioner Voytilla that staff does not practice that sort of
10 behavior. He clarified how this type of situation is approached and dealt with to
11 assist the applicant with the scope of the proposal and assure staff that the project
12 is actually what it has been presented as. He commented that a policy exists
13 within the department that the forms would not be changed more than twice
14 within a year, adding that with the exception of some simple format changes, they
15 have not been changed in the past few years.

16
17 Commissioner Voytilla expressed his opinion that a good approach while deleting
18 items from the code, it is helpful to outline what an application does have to
19 contain. He observed that some of these requirements are obviously basic and
20 necessary, and suggested including the phrase “when necessary” or “if staff finds
21 it necessary” with certain requirements. He questioned the advisability of
22 including this on a form rather than in the code, adding that an applicant may
23 argue this issue.

24
25 Mr. Sparks commented that an applicant might also argue that it is not necessary.

26
27 Chairman Maks clarified that the key to this situation is that if there is a
28 disagreement with regard to whether or not a condition is necessary, staff should
29 have the ability to make findings and deny an application based on these findings.

30
31 Mr. Naemura mentioned that the next level of this issue is identifying the true
32 decisional criteria on which a finding of compliance can not be made, due to the
33 lack of evidence. He pointed out that when an applicant does not submit
34 necessary documentation, this, in itself, represents a defect for the applicant and
35 will generally mean that necessary evidence is not available.

36
37 Chairman Maks requested clarification of his understanding that it does not matter
38 whether it is on the form or in the code.

39
40 Mr. Naemura observed that when a document is unavailable, it is advisable to
41 attempt to locate the criteria on which a finding of compliance can not be made.

42
43 Chairman Maks expressed his understanding of Mr. Naemura’s observation,
44 explaining that if a necessary traffic report is not submitted; the City of Beaverton
45 is able to determine that the application is not compatible with the surrounding
46 area.

1
2 Mr. Naemura referred to specific engineering issues, noting that based upon the
3 number of units it can be determined, for example, that an application will impact
4 the level of service at a particular intersection. Without the expert evidence in the
5 applicant's favor, all that is available is evidence of intensified use and opinions
6 of the Traffic Engineers on staff.
7

8 Chairman Maks requested clarification of whether the City of Beaverton is on
9 firm legal ground with this situation.
10

11 Mr. Naemura assured Chairman Maks that the City of Beaverton is on firm legal
12 ground with this situation so long as some evidence exists within the record
13 referring to the application, such as the number of town houses proposed in that
14 kind of scenario, as well as evidence from staff evaluating that particular
15 situation.
16

17 Chairman Maks referred to specifications in the ITE manual for townhouses.
18

19 Mr. Naemura stated that the applicant should be aware of this particular type of
20 analysis that will be made by the Planning Commission.
21

22 Mr. Voytilla noted that if a determination is made and the applicant is waived
23 from a condition by staff, what if the Planning Commission determines that more
24 information is necessary and chooses to include that condition that had been
25 waived.
26

27 Chairman Maks informed Mr. Voytilla that generally this is not true, agreeing that
28 it is a possible.
29

30 Commissioner Heckman reminded Chairman Maks that the Planning Commission
31 has overruled staff in the past.
32

33 Chairman Maks clarified that in the 7-1/2 years he has served on the Planning
34 Commission, an application has not been denied based upon the Planning
35 Commission overruling staff.
36

37 Commissioner Voytilla rephrased his question, specifying that it may create an
38 unfair burden on an applicant to require a condition that has been previously
39 waived by staff.
40

41 Chairman Maks expressed his opinion that this would not necessarily create a
42 burden when the condition should have been met originally, as far as this body is
43 concerned. Noting that he understands this concern with this particular issue, he
44 reminded Commissioner Voytilla that the application would not likely be
45 approved if the Planning Commission feels this condition should have been met
46 anyway. He emphasized that the Planning Commission would make every

1 attempt to take action in the best interest of the City of Beaverton, which may be
2 to disagree with staff's assessment.

3
4 Mr. Sparks compared this situation to a staff recommendation of denial or
5 approval with which the Planning Commission disagrees.

6
7 Commissioner Voytilla commented that he realizes this, adding that this service
8 for the public as a whole should involve an expedient review.

9
10 Commissioner Wolch emphasized that they are taking material from the Code and
11 relying on the form, adding that the result is the removal from the public process
12 and with no standards to prevent staff from revising that form continuously.

13
14 Mr. Naemura responded that pre-application information issues relate to
15 Commissioner Voytilla's comments regarding fairness versus unfairness. He
16 expressed his opinion that the answer to the various questions by Commissioner
17 Wolch and Commissioner Voytilla are yes, stating that this is where any such
18 decision is going to be made, and that sometimes situations appear more visible in
19 a group discussion process.

20
21 Chairman Maks mentioned that at the Public Hearing it is possible that a citizen
22 will make an observation that neither staff nor the Planning Commission had even
23 considered, adding that the applicant may receive further conditions at this time,
24 also.

25
26 Chairman Maks questioned Commissioner Heckman regarding his recollection of
27 past disagreements with staff, noting that he doesn't personally recall any such
28 situation that information had not been available.

29
30 Commissioner Heckman stated that several have been denied because the
31 Planning Commission disagreed with a staff report.

32
33 Chairman Maks indicated that he is referring to a report being unavailable
34 because staff had informed an applicant that a particular document was not
35 necessary, adding that there has sometimes been a disagreement over the scope of
36 a study.

37
38 Commissioner Heckman referred to a PUD application at Murray Boulevard and
39 Scholl's Ferry Road.

40
41 Chairman Maks advised Commissioner Heckman that staff had required the
42 report and the applicant had failed to comply with the requirement, emphasizing
43 that he is referring to staff.

44
45 Mr. Sparks referred to materials that are provided with regard to scope and
46 substance, emphasizing that an applicant could conceivably take a cocktail napkin

1 and write: "Traffic Report – There is no impact", hand it to staff, who would
2 have to consider it a traffic report. He stressed that staff has no control over
3 content of such a report, although in the Facilities Review Process, staff can
4 indicate that they can not make a finding within the list of criteria that is related to
5 traffic.

6
7 Mr. Sparks also observed that on the 31st day following a letter of completeness
8 the applicant has the right to demand a Public Hearing with the materials
9 applicant has provided, at which time the Planning Commission must make a
10 decision on the application.

11
12 Based upon Commissioner Voytilla's suggestion, Mr. Sparks stated that there is a
13 current situation that does not involve any flexibility in application of submittal
14 requirements. He commented that staff is recommending flexibility is necessary
15 in order to be equitable and fair in a broader general sense. He explained that if
16 the necessary information is on the form, or if the words "if necessary" were
17 added, as suggested by Mr. Voytilla, the applicant would still have the option of
18 choosing to not submit. He added that Planning Commission would still have the
19 option of requiring a condition that staff had deemed not necessary, although the
20 Staff Report would include information indicating why staff had deemed a certain
21 document unnecessary.

22
23 Chairman Maks stated that if the form requires a traffic study and staff asserts that
24 it does not, and the Planning Commission denies an application based upon this
25 issue, the City of Beaverton is on weaker ground than if this requirement had been
26 included in the criteria.

27
28 Commissioner Heckman questioned whether Chairman Maks is indicating a
29 denial based upon the fact that a traffic study is required on the form and is not
30 provided because the requirement has been waived by staff.

31
32 Chairman Maks clarified that his intent is not to deny due to the absence of the
33 traffic report, which has been waived, but because the burden of proof is still on
34 the applicant to indicate that there will be no detrimental effect on this area of our
35 infrastructure.

36
37 Mr. Naemura suggested that as this issue and criteria are discussed, it is necessary
38 to remember that sometimes thin evidence will demonstrate that a criteria is met
39 in the absence of significant evidence to the contrary.

40
41 Chairman Maks identified that his concern is if a decision is appealed, possibly to
42 the City Council or the Land Use Board of Appeals, particularly if an applicant
43 can state that staff had informed them that a Traffic Study is not necessary. He
44 added that this issue would be complicated if the denial was partially based upon
45 the determination that there was inadequate evidence provided by the applicant
46 regarding this Traffic Study.

1
2 Mr. Naemura noted that both parties prefer to resolve evidentiary conflicts at the
3 local level, rather than the time and cost involved in appellate litigation, and
4 Chairman Maks agreed with this observation.

5
6 Chairman Maks pointed out that in the event that the Planning Commission
7 disagrees with staff, generally the issues are resolved. He commented that when
8 the applicant fails to follow direction of the staff, the denial is based upon that
9 failure to comply.

10
11 Commissioner Voytilla referred to page 3 of the staff narrative, specifically that
12 “proposed amendment will require the denial of an application if the approval
13 authority has determined that an applicant, or any officer, or principal of the
14 applicant, has failed to fulfill the conditions of approval imposed on any previous
15 development action within the City of Beaverton jurisdiction.” He questioned the
16 possibility of annexing a property from Washington County that happens to have
17 such a development action from Washington County.

18
19 Mr. Sparks discussed the annexation code amendments, noting that they will be
20 available soon, and clarified that it would be the responsibility of the City of
21 Beaverton to maintain code enforcement. He pointed out that one incentive for
22 annexation is that these properties then receive code enforcement.

23
24 Commissioner Voytilla noted that he had been exposed to some similar situations
25 with Washington County in which certain individuals and issues had succeeded in
26 slipping through the cracks.

27
28 Commissioner Voytilla referred to page 1 of 33, specifically Section 10.60.1.A.,
29 which pertains to a period of two calendar year, and suggested the following
30 amendment: “within a period of two (2) calendar years **of date of said approval**.”

31
32 Mr. Sparks agreed with this amendment.

33
34 Commissioner Voytilla referred to page 1 of 33, specifically Section 10.60.1.B.,
35 suggesting that the applicant, officer or principal of the applicant be amended to
36 include specifically “any successor in interest”.

37
38 Chairman Maks informed Commissioner Voytilla that this had already been
39 amended to include “any interested party”.

40
41 Mr. Sparks clarified that this particular section had not been amended.

42
43 Chairman Maks questioned whether the change had been made on a different
44 section.

45
46 Mr. Voytilla confirmed that he is referring to page 1 of 33.

1
2 Mr. Sparks requested clarification, and Commissioner Voytilla verified that this
3 section should be amended, as follows: "...upon a determination that the
4 applicant, or any officer, or principal of the applicant, **or successor in interest,**
5 has failed to fulfill conditions of approval..."

6
7 Commissioner Voytilla observed that this language should cover anyone who has
8 an interest in a property at present or at any future time.

9
10 Commissioner Voytilla referred to page 2 of 33, Section 2.1.B., questioning
11 whether the City of Beaverton had experienced any problems concerning the
12 standing of a lender or the event of a contract sale. He described an applicant
13 represented in a land use action by someone under contract to purchase the
14 property involved, adding that when the situation does not evolve as anticipated,
15 the contract is null and void, creating problems for the property owner.

16
17 Mr. Sparks stated that he is not aware of any current situation such as this, adding
18 that he agrees it is a possible scenario.

19
20 Commissioner Voytilla commented that he had seen this happen in other
21 jurisdictions, adding that this is something to be aware of.

22
23 Commissioner Voytilla referred to page 16 of 33, which involves various types of
24 lot line adjustments, partitioning and subdivisions, expressing concern that he had
25 seen no reference to the requirements of the Washington County Surveyor's
26 Office, who actually set these standards.

27
28 Mr. Sparks informed Commissioner Voytilla that State Statute Chapter 92 of ORS
29 governs this issue.

30
31 Emphasizing the importance of completeness in a project with the current 120-
32 day requirement, which starts the clock ticking, Commissioner Wolch questioned
33 whether this flexibility would be an asset in this regard. He suggested that in the
34 situation that staff is not receiving requested documentation, specifically a code
35 requirement, this may provide a sort of a "hammer" to ensure that necessary
36 documentation be provided.

37
38 Mr. Sparks repeated his opinion that in his previous example of the cocktail
39 napkin, unless the code is specific, the applicant can actually insist that is his
40 traffic report. Unless the code includes very descriptive contents covering every
41 single possibility, there is no method to insure with certainty and completeness
42 that an application has every single requirement covered, which would severely
43 impair any possibility of flexibility with applicants. He discussed the greatest
44 concern of staff, which involves large developments, noting that the result is that
45 the process becomes much more onerous and costly for the smaller projects. He
46 described the situation as a "balancing act", observing that it has been necessary

1 to determine which issues are important versus which are not. Mr. Sparks
2 concluded that basically staff is asking for the trust of the Planning Commission
3 and the community.

4
5 Commissioner Bode referred to the comment regarding a pre-application
6 conference, expressing her opinion that staff may be leaving themselves too
7 vulnerable to accusations of biased or preferential treatment.

8
9 Mr. Maks informed those present that all of these issues have been discussed at
10 Code Review.

11
12 **PUBLIC TESTIMONY:**

13
14 This being the time for public comment on the Public Hearing, it was observed
15 that no one appeared to testify at this time.

16
17 Mr. Naemura referred to page 1 of 33, suggesting that it be amended, as follows:
18 "...and a determination that such a ~~decision~~ **denial** would encourage
19 compliance..."

20
21 Commissioner Heckman suggested the term "finding of non-compliance", rather
22 than the word "denial".

23
24 Mr. Sparks expressed his opinion that the word "denial" relates back to the action
25 of the Planning Commission or Board of Design Review, and explained the
26 rationale that this denial will encourage compliance, or is necessary to protect the
27 public from future non-compliance.

28
29 Chairman Maks observed that the word "finding", in and of itself, is enough to
30 determine that such a finding...

31
32 Mr. Sparks clarified that a denial is an action, rather than a finding.

33
34 Chairman Maks agreed that the denial is an action, adding that such a finding
35 leads to the denial.

36
37 Mr. Naemura explained that he is satisfied with the word "finding".

38
39 Chairman Maks suggested the following amendment: "...and a determination
40 that such a ~~decision~~ **finding for denial** would encourage compliance..."

41
42 On question, Mr. Sparks and Mr. Naemura both informed Chairman Maks that
43 they concur with this amendment.

44
45 Being no members of the public offering testimony on this issue, the public
46 testimony portion of the Public Hearing was closed.

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Expressing his opinion that this particular document is necessary, Commissioner Heckman expressed his concern with the possible implications and interpretation of the word “necessary” as it relates to this document. He referred to Section 10.60.B. of page 1 of 33, emphasizing his approval of this action. Noting that he feels that some latitude is necessary, he mentioned that he would have liked to review various samples of the forms.

Mr. Sparks advised Commissioner Heckman that he could provide several of these forms to him for his review.

Expressing his opinion that staff had created a good document, Commissioner Heckman stated that he would like this Staff Report returned to staff for the revisions that have been discussed, at which time he would fully support approval of the document.

Noting that he is generally in support of the direction of this Staff Report, Commissioner Wolch commented that he agrees with the condition of approval that provide that conditions of prior developments be met. He agreed with Commissioner Heckman that necessary revisions should be made prior to any final approval.

Commissioner Bode commented that she had originally felt that too much latitude exists within this document. She stated that she feels confidence in the technology available to the recording secretary regarding negotiations over terminology, adding that she trusts the accuracy of the staff, counsel and the recording secretary to make the necessary corrections without further review prior to approval.

Commissioner Dunham stated that she would like to see these revisions made prior to approval due to the amount of changes and nature of these changes. She noted that she still has some concern with some issues, although she feels that with counsel’s input, she is comfortable with the pared-down version offered, provided it is not necessary to codify all of the deletions that have been made.

Commissioner Johansen expressed agreement with revisions being made prior to approval of the Staff Report, at which time he would support approval. Noting that he agrees that staff needs the latitude, he urged that this latitude be utilized for the primary purpose of preventing asking the absurd of applicants. He emphasized that this would be advantageous to the City of Beaverton, as long as it is properly implemented.

Commissioner Voytilla concurred with the majority of the Commissioners, emphasizing that he would also like the revisions made before the Staff Report is approved. He repeated Commissioner Johansen’s concern that staff utilize this to eliminate absurd requests, adding that he fully trusts the knowledge, experience

1 and discretion of the staff. He noted that he would also like to review the forms,
2 emphasizing that he is concerned with legal issues involved.

3
4 Commending Mr. Sparks for his efforts on this document, Chairman Maks
5 expressed agreement with Commissioner Bode and recommended a motion that
6 the Staff Report be adopted, as amended. He pointed out that much of the
7 discussion in Code Review involves situations where the square peg does not fit
8 in the round hole. He pointed out that results of changes to the code are that the
9 code will eventually carry more weight and be more effective than it is at present.

10
11 On question, Mr. Sparks informed Chairman Maks that he would like to bring this
12 amended document back before the Planning Commission on April 12, 2000,
13 adding that he will send out the revised materials on April 6, 2000.

14
15 Commissioner Dunham **MOVED** and Commissioner Voytilla **SECONDED** a
16 motion that the approval for TA 99-00015 – Application Submittals, be continued
17 to a date certain of April 12, 2000.

18
19 On question, Chairman Maks informed Commissioner Johansen that the Public
20 Hearing on this text amendment has been closed and the continuance is merely for
21 approval of the amended document.

22
23 Motion **CARRIED** unanimously.

24
25 **B. TA 2000-0001 – PARKING STANDARDS TEXT AMENDMENT**

26 The proposal would, if approved, amend the City's parking standards by deleting
27 the parking tables and text found in Section 20.20.70, and modifying the text and
28 parking ratios in Section 60.20. The parking ratios to be modified will affect
29 some nonresidential land uses.

30
31 Mr. Sparks presented the Staff Report, adding that staff would like to continue
32 this Public Hearing until April 12, 2000, to be heard concurrently with an item
33 scheduled for that agenda.

34
35 **PUBLIC TESTIMONY:**

36
37 This being the time for public testimony on this issue, it was observed that no
38 members of the public wished to testify at this time.

39
40 Commissioner Bode **MOVED** and Commissioner Dunham **SECONDED** a
41 motion that the Public Hearing for TA 2000-0001 – Parking Standards Text
42 Amendment, be continued to a date certain of April 12, 2000.

43
44 Motion **CARRIED** unanimously.

45

8:30 p.m. to 8:39 p.m. – Chairman Maks called for a break, during which time he introduced the new alternate member of the Planning Commission, Bob Bernard, adding that he hopes that Commissioner Heckman is satisfied. Mr. Maks observed that due to the fact that Commissioner Wolch is resigning, Mr. Bernard would only be an alternate for a short period of time before he assumes a regular position after April 19, 2000, at which time another alternate will be necessary.

C. TA 2000-0002 – 2000 OMNIBUS TEXT AMENDMENT #1

The proposed amendments would correct several internal inconsistencies established as a result of recent text amendments, amend the minimum residential density provisions, and correct syntax and grammar errors in the Code.

Mr. Sparks presented the Staff Report.

Commissioner Dunham referred to page 1 of 18, page 2 of 18 and page 12 of 18, requesting that Section 20.05.80, Section 20.10.80 and Section 20.20.80 be amended, as follows: “If meeting the minimum density will require the submission and approval of variance application(s) above ~~an~~ **and** beyond application(s) for adding new primary dwelling units or land division of property, meeting minimum density shall not be required.”

Commissioner Dunham referred to page 17 of 18, questioning whether it is necessary to cite the ordinance in Section 60.30.45.2.E.

Mr. Sparks assured Commissioner that this particular ordinance is currently cited throughout that section.

Commissioner Bode suggested that for ease of recording, the left margin of these Staff Reports be numbered 1 through 40 to indicate each line, adding that this would simplify both references and revisions.

Commissioner Bode referred to “pleading paper” and Chairman Maks observed that the Word program actually includes a template that provides this feature.

Mr. Sparks agreed with Commissioner Bode, adding that he intends to follow her suggestion.

Commissioner Heckman referred to page 4 of 18, questioning why was medical clinic being deleted, and Mr. Sparks informed him that the use is already listed as a permitted use.

Commissioner Heckman referred to page 11 of 18, specifically Section 20.20.25.05.1, and questioned whether the change in the minimum density from 15 to 24 units per acre and the addition of a maximum density of 30 units per acre were implemented by the City Council.

1 Mr. Sparks clarified that in Section 20.20.80 is a table which lists minimums and
2 maximums, and the change from 15 to 24 units per acre had been made for
3 consistency within the code, while the maximum density of 30 units per acre was
4 added for informational purposes.

5
6 Commissioner Heckman referred to page 13 of 18, specifically Section 17.2.(i),
7 which references Section 40.10.15.3.G. He noted that this particular section
8 refers to the term “substantial construction”, requesting a definition of this term.

9
10 Mr. Sparks questioned whether Commissioner Heckman is referring to proposed
11 text or what is currently within the Code.

12
13 Commissioner Heckman indicated that this text is presently in the code.

14
15 Mr. Sparks requested clarification from Commissioner Heckman that this
16 particular question refers to the current text, rather than the proposed text.

17
18 Commissioner Heckman advised Mr. Sparks that he is referring to current text
19 that is referred to in the proposed text, adding that a copy of the Code is located in
20 his drawer, although it does not appear to have been updated.

21
22 Mr. Sparks noted that “substantial construction” is defined on page DF-27, which
23 is Chapter 90 of the Code.

24
25 Commissioner Heckman referred to page 14 of 18, specifically Section 18.3.F.,
26 suggesting the following amendment: “**Requests for review of** proposed changes
27 shall be submitted in writing to the Planning Director.”

28
29 Mr. Sparks agreed with Commissioner Heckman’s revision.

30
31 Commissioner Heckman referred to page 15 of 18, specifically Section
32 40.50.10.2, and questioned why the Board of Design Review had been deleted
33 from this section.

34
35 Mr. Sparks advised Commissioner Heckman that the Board of Design Review
36 does not have the authority for approval of sign permits, adding that this Type I
37 application is approved by the Planning Director.

38
39 Commissioner Heckman questioned whether the Board of Design Review had this
40 authority in the past.

41
42 Mr. Sparks observed that although they may have had this authority at some time
43 in the past, this is not currently the situation.

44
45 Commissioner Heckman stated that he remembers the Board of Design Review
46 being responsible for sign permits in the past.

1
2 Mr. Sparks repeated that this responsibility has now been assigned to the Planning
3 Director.

4
5 Chairman Maks advised that the Board of Design Review be involved in the
6 appeals of sign permits.

7
8 Mr. Sparks agreed that they are involved in the process of sign permit appeals,
9 emphasizing that while they do not approve permits, they will review an appeal.

10
11 Commissioner Heckman referred to page 16 of 18, specifically Section
12 50.40.1.A., requesting that the following corrections be made in the punctuation,
13 as follows: "Any person receiving a notice described in Section 50.30.2.B. may
14 request in writing, within 10 days of the date the notice was postmarked or of the
15 date other notice was carried out, that the Planning Commission review the
16 Planning Director's decision."

17
18 Mr. Sparks agreed with the addition of these commas to the text.

19
20 Commissioner Heckman referred to paragraph 2 of page 3 of the Staff Report, at
21 which time he realized that his question had been addressed.

22
23 Commissioner Heckman referred to paragraph 2 of page 5 of the Staff Report,
24 specifically the portion that states that revisions were made by the City Council.
25 He questioned why these revisions had not been provided to the Planning
26 Commission, adding that this would be a gesture of informational courtesy.

27
28 Commissioner Voytilla referred to paragraph 5 of page 4 of the Staff Report,
29 specifically the statement "...if an applicant is unable to design a land division at
30 minimum density while meeting site development requirements, without first
31 obtaining a variance, the applicant will not be required to meet minimum
32 residential density." He discussed future issues dealing with streams, corridors
33 and separations and noted that it may sometimes not be possible to comply with
34 density requirements without obtaining a variance, which may create a burden on
35 the applicant.

36
37 Mr. Sparks advised that by calculating that density, it would be possible, within
38 the current Code, to subtract out constrained lands for water retention and other
39 issues. He mentioned an example involving a partition in which a maximum of 3
40 lots were allowed, noting that the 80% rule is also 3, and explained that the 3.2
41 lots had been rounded down to 3, while the 80% called for 2.8 lots, which had
42 been rounded up to 3. He noted that he had been informed that other
43 jurisdictions, such as Tigard, have a regulation that specifies that parcels of a
44 certain size are exempted from meeting minimum densities, adding that it is
45 generally these parcels that create difficulties in the City of Beaverton. He

1 advised that he is in the process of investigating this option, which may be
2 included in a later text amendment.

3

4 Commissioner Voytilla informed Mr. Sparks that he may have misunderstood that
5 his concern is with meeting the overall housing goals for the City of Beaverton.

6

7 Mr. Sparks mentioned that one of the factors included in the City of Beaverton's
8 Buildable Lands Analysis had been constrained lands, adding that Metro allows
9 accommodation of at least 15,000 dwelling units. He had considered all currently
10 vacant lands, underdeveloped, or potentially redevelopable, as well as coverage
11 provided by Metro for stream corridors, wetlands, steep slopes, etc., which had
12 been taken off the top of the list. He provided an example of a proposal for
13 development along Scholl's Creek on the south end of town, emphasizing that a
14 swathe of land had already been removed from the total equation. He noted that
15 this had demonstrated that it is possible to meet substantial compliance with the
16 housing targets for the City of Beaverton, which are essentially 90% of the growth
17 targets. He added that based on the decision with Aspen Woods, this has created
18 an issue that needs to be resolved by finding other numbers elsewhere within the
19 City. He emphasized that to report compliance with the housing numbers,
20 development must be at 80% -- anything less cannot be applied towards growth
21 targets, which necessitates the requirement of building at 80%.

22

23 Commissioner Voytilla referred to page 10 of 18, specifically Section
24 20.20.20.05.1, and questioned the new section; "There shall be no maximum
25 residential density." He expressed his opinion that this indicates that the sky is
26 the limit, suggesting that some qualifiers be included.

27

28 Mr. Sparks noted that the qualifiers in that particular zoning district would be the
29 height restrictions, which will control this potential growth, to some extent.

30

31 Commissioner Voytilla indicated that he realizes that height restrictions provide
32 some control.

33

34 Mr. Sparks clarified that no maximums were specified in certain zoning districts.

35

36 Commissioner Heckman questioned whether "single-family attached" has been
37 removed from all text.

38

39 Mr. Sparks informed Commissioner Heckman that this is correct.

40

41 Commissioner Heckman suggested that single family attached also be removed
42 from the definitions in Section 90.

43

44 Mr. Sparks commented that he had thought that he had removed single family
45 attached from the definitions, and referred to the last paragraph of page 18 of 18,

1 advising Commissioner Heckman that “Dwelling, Single Family Attached” has
2 been deleted.

3
4 Commissioner Voytilla questioned whether this action essentially eliminates
5 duplexes.

6
7 Mr. Sparks assured Commissioner Voytilla that this does not eliminate duplexes,
8 adding that staff is attempting to eliminate “detached dwelling” and “attached
9 dwelling”. He clarified that a duplex is now called multi-family and is an
10 attached dwelling.

11
12 On question, no one had any further questions of staff.

13
14 **PUBLIC TESTIMONY:**

15
16 This being the time for public testimony on this issue, it was observed that no
17 members of the public wished to testify at this time.

18
19 Mr. Naemura referred to page 4 of 18, and requested elaboration regarding the
20 deletion of “6. Medical Clinics” and “13. Service Stations”.

21
22 Mr. Sparks discussed this drafting oversight, noting that following the appeal to
23 City Council of the Regional Center Text Amendment by local land and business
24 owners; extensive negotiations led to deletions, additions and relocations of text.
25 This resulted in several errors in the final ordinance adopted by the City Council,
26 which are now being corrected. He referred to Mr. Naemura’s question regarding
27 the deletion of Medical Clinics and Service Stations under Conditional Uses,
28 noting that these items are currently listed under both Permitted Uses and
29 Conditional Uses. Following review, Mr. Sparks and Mr. Naemura had
30 determined that both of these uses were intended as Permitted Uses.

31
32 Mr. Sparks mentioned two housekeeping items, noting that when the staff utilizes
33 the asterisks within text, it serves as shorthand not to have to refer to vast amounts
34 of text. He added that omitting text does not indicate a deletion, noting that a
35 deletion is actually designated by a strike-through. He observed that this
36 particular text had been sent to the Department of Land Conservation and
37 Development (DLCD), in compliance with their requirement to receive 45-day
38 notification prior to a first evidentiary hearing. For the record, he identified the
39 one change that has occurred since that notice was first sent out, specifically the
40 deletion of all references to Attached Single Family Dwellings, adding that with
41 this exception, DLCD has seen this text.

42
43 Chairman Maks closed the public testimony section of the Public Hearing

44
45 Commissioner Voytilla **MOVED** and Commissioner Heckman **SECONDED** a
46 motion to adopt TA 2000-0002 – 2000 Omnibus Text Amendment #1, based upon

1 the testimony, reports and exhibits presented during the public hearing on the
2 matter and upon the background facts, findings and conclusions found in the Staff
3 Report dated April 5, 2000, as amended.

4
5 Motion **CARRIED** unanimously.

6
7 Mr. Sparks clarified the motion, noting that the first series of amendments will be
8 found in Section 2, Section 4, and 15 of the attached text, as follows: "If meeting
9 the minimum density will require the submission and approval of variance
10 application(s) above ~~an~~ **and** beyond application(s)..." He noted that Section 18
11 will be amended, as follows: "**Requests for** proposed changes shall be
12 submitted..." He noted that Section 23 will be amended, with the addition of
13 punctuation, as follows: commas following "may request in writing," and "or of
14 the date other notice was carried out,".

15
16 **D. TA 2000-0003 – UTILITY UNDERGROUNDING TEXT AMENDMENT**

17 The proposal would, if approved, amend the Development Code to allow the
18 payment of an "in-lieu" fee as an alternative to placing above ground utilities
19 underground. The proposed text would add a new section to Chapter 60 and
20 amend several sections of Chapter 40 of the Development Code. The proposed
21 amendment would apply to existing development only when redevelopment of
22 property is proposed.

23
24 Mr. Sparks presented the Staff Report and explained that this particular text
25 amendment is familiar to the Commission, adding that the City Attorney had
26 noted some concerns with a prior amendment. Processing of the first utility
27 undergrounding text amendment had been suspended and the current utility
28 undergrounding text amendment had been generated. He observed that the most
29 substantial change concerns prioritizing programming of the funds received that
30 represent "in lieu" fees. The City Attorney had expressed concern that placing
31 that text in the Development Code would result in the Capital Improvement
32 Budget Process becoming a Land Use decision, which was not appropriate.

33
34 On question, Mr. Naemura stated that he has no comments at this time,

35
36 Commissioner Johansen referred to page 11 of the Staff Report, and Mr. Sparks
37 discussed item no. 2, adding that there is a decision to be made regarding which
38 option to pursue and offered to expand on this issue.

39
40 Commissioner Johansen requested clarification that Mr. Sparks recommends
41 Option B.

42
43 Mr. Sparks concurred that he recommends Option B.

44
45 Commissioner Heckman questioned where the 50 KV standard originated.

46

1 Mr. Sparks advised Commissioner Heckman that this had originated with the City
2 Engineer and the representative of the power provider.

3

4 Commissioner Heckman pointed out that a document he had recently reviewed
5 had described neighborhood distribution lines as 32 KV and under.

6

7 Mr. Sparks observed that the power lines on Beaverton-Hillsdale Highway are
8 50,000, while the transmission lines on the BPA corridor are significantly higher.

9

10 Commissioner Heckman advised that these are probably 232,000. He discussed
11 neighborhoods that have existing overhead wiring, noting that high voltage is
12 exempt. He mentioned telephone lines, cable and neighborhood distribution lines,
13 which are less than 50 KV, which would have to be located underground. He
14 commented that the 50 KV and above would still have to be located above
15 ground, noting that all that would be added would be the ugly telephones, cable
16 boxes and transformers at the ground level. He observed that recently the cable
17 company had switched to larger boxes, noting that they stick up about 18 inches,
18 dotted throughout the landscape. He mentioned that this is one of the trade-offs.

19

20 Mr. Sparks expressed his opinion that this is a value judgment that the Planning
21 Commission will have to make in terms of what aesthetic is preferred.

22

23 Commissioner Heckman emphasized that the trade-off would involve some loss
24 and some gain, expressing his opinion that this more than compensates.

25

26 Chairman Maks requested clarification of his understanding that Commissioner
27 Heckman prefers Option A in the Staff Report.

28

29 Commissioner Heckman agreed that he is essentially in favor of Option A.

30

31 Commissioner Heckman expressed concern with the phrase "creating streets", and
32 Mr. Sparks clarified that creating streets does refer to new streets.

33

34 Commissioner Heckman referred to page 2 of 9, specifically Section 60.65.25,
35 and requested clarification of how the word "immediately" is defined for this
36 purpose.

37

38 Mr. Sparks advised Commissioner Heckman that the intent of immediately be at
39 the time of the construction.

40

41 Commissioner Heckman questioned whether this could be more clearly defined.

42

43 Mr. Sparks referred to Section 60.65.15.4. which states that all underground
44 utilities shall be constructed prior to the final surfacing of the streets, which
45 should provide an adequate time frame.

46

1 Commissioner Heckman requested clarification that this includes to immediately
2 place the utilities or pay the in lieu fee.

3

4 Mr. Sparks confirmed that this provides for immediate placement of utilities or
5 payment of an in lieu fee.

6

7 Commissioner Heckman referred to the landscaping issue and concern with
8 placement of utilities in a timely manner.

9

10 Mr. Sparks discussed the issue of adequate enforcement tools, advising
11 Commissioner Heckman that the final plat will not be recorded until the
12 infrastructure improvements are in place in a large subdivision, which will include
13 underground placement of utilities or payment of an in lieu fee.

14

15 Commissioner Voytilla expressed concerns with the in lieu fees being set up in a
16 fund and imposing guidelines of where these fees would be utilized. He
17 expressed his opinion that those fees should be utilized where the impact is
18 created. He questioned whether staff has considered prioritizing the Capital
19 Improvement Project.

20

21 Mr. Sparks assured Commissioner Voytilla that these fees would be required to be
22 placed into a dedicated account, which would specify utilization in
23 undergrounding funding. He suggested a policy statement in the overall capital
24 improvement project budget that notes where that money is available and where it
25 is to be utilized, which should be where the impact occurs. Observing that he has
26 been involved with the Development Code, he advised Commissioner Voytilla
27 that he does not feel he can adequately address all of his concerns at this time
28 regarding the Capital Improvement Project budget process.

29

30 Chairman Maks emphasized that he does not want to see this issue buried, adding
31 that although he understands, he does not agree with the City Attorney regarding
32 the Capital Improvement Projects. He advised that he does not want to support
33 this in the current format, stressing that he would like to see this resolved in the
34 near future.

35

36 Commissioner Voytilla observed that the underground utilities would most likely
37 be primarily installed by new development, mostly applicable in the older areas
38 that are going through redevelopment.

39

40 Mr. Sparks commented that this would also include the corridors and main streets.

41

42 Commissioner Voytilla emphasized the area that needs to benefit from these
43 funds, pointing out that the overall intent is for the benefit of the areas that will be
44 impacted by this. He expressed his concern that funds collected here not be
45 utilized for some other project, adding that he agrees with Commissioner

1 Heckman's observation that some of the utility boxes are beginning to appear a
2 little unsightly.

3

4 Mr. Sparks observed that a number of text amendments establishing in-lieu fees
5 are scheduled in the future, and explained that these are not limited to only utility
6 undergrounding. He pointed out that he is not certain how to respond to this
7 concern, adding that this will be under the advisement of the City Council.

8

9 Noting that he is in favor of Option B, Chairman Maks mentioned that if these
10 fees are collected as a result of certain developments, specifically because the
11 underground utilities is not feasible for some reason, the revenue generated from
12 these fees should not be utilized elsewhere.

13

14 Mr. Sparks reviewed a note provided by the City Attorney, as follows: "By
15 placing such principles in the code, the decisions about CIP priorities can be
16 challenged by any reviewing board or commission or challenged and would be
17 subject to review by LUBA."

18

19 Chairman Maks noted that he understands this concept, although it is not exactly
20 what he wants, and noted that he would like his issues addressed at some point,
21 possibly the CIP policy section. He emphasized that he would like verification
22 prior to acting on this text amendment.

23

24 Commissioner Wolch noted that this is an issue with every impact fee, creating a
25 nightmare to administer, adding that certain activities can be credited in place of
26 these in lieu fees.

27

28 Chairman Maks agreed with Commissioner Wolch, observing that he is
29 attempting to offer both sides of this issue and commented that the issue here is
30 putting up ugly lines versus burying ugly lines.

31

32 Chairman Heckman questioned the possibility of establishing this account
33 directed to a specific geographic area within the City of Beaverton, possibly
34 defined as each of the 15 Neighborhood Associations.

35

36 Chairman Maks questioned whether there are any additional specific questions of
37 staff regarding this document at this time.

38

39 Commissioner Dunham indicated that she has a follow-up regarding what
40 Commissioner Heckman had just stated.

41

42 Advising Commissioner Dunham that he would get to that issue, Chairman Maks
43 thanked staff for their efforts.

44

45 **PUBLIC TESTIMONY:**

46

1 This being the time for public testimony on this issue, it was observed that no
2 members of the public wished to testify at this time.

3

4 Observing that there are no final questions of staff at this time, Commissioner
5 Maks directed the members of the Planning Commission that at this time he
6 would like to receive a consensus on their opinions on the Option A/Option B
7 issue, as stated in the Staff Report, followed by a consensus for either approval or
8 a continuance of the Public Hearing.

9

10 Commissioner Heckman expressed his approval of Option A.

11

12 Observing that she did not approve of either option, Commissioner Bode
13 abstained from voting on this issue.

14

15 Commissioner Johansen expressed his approval of Option B.

16

17 Commissioner Wolch expressed his approval of Option B.

18

19 Commissioner Dunham expressed her approval of Option B.

20

21 Commissioner Voytilla advised that he is not comfortable with either option and
22 abstained from voting on this issue.

23

24 Chairman Maks expressed his approval of Option B.

25

26 Chairman Maks requested a consensus of whether or not the funds from the in
27 lieu fees should be prioritized or set aside in some fashion.

28

29 Commissioner Johansen stated that he agrees in concept and would approve this
30 alternative, although he feels that the neighborhood level is too specific.

31

32 Commissioner Wolch emphasized that he would like to see the issue of credibility
33 of the fee addressed, and discussed a complex situation in the State of Washington
34 concerning Traffic Impact Fees.

35

36 Chairman Maks explained the situation in the State of Washington, noting that
37 concurrency addresses many of these issues.

38

39 Commissioner Heckman commented that money gained from a certain area
40 should be retained for the benefit of that same area at some future time, and
41 questioned what would prevent a governing body from appropriating these funds
42 for use in an "emergency" situation. He emphasized that this creates a real
43 problem for him.

44

45 Commissioner Voytilla expressed agreement with Commissioner Heckman's and
46 Commissioner Wolch's comments, commenting that he has witnessed accounting

1 nightmares, some of which the money was never accounted for. He discussed
2 examples of in lieu fees for parks and roads, etc., noting that some of these have
3 been quite successful and suggested that more information is necessary.
4

5 Commissioner Dunham stated that she agrees with Commissioner Heckman,
6 Commissioner Wolch and Commissioner Voytilla, adding that she prefers to keep
7 the resources in the affected area. She agreed that there is a problem with the
8 definition of area, noting that some of the NACs have huge boundaries, which
9 could be problematic.
10

11 Commissioner Dunham identified the administration of these funds as a
12 challenge, adding that she feels the money should be utilized within the area in
13 which it is received.
14

15 Commissioner Bode commented that she would like to see an example that might
16 suggest the amount of money concerned. She observed that every time a sub-
17 structure is added, or somebody to babysit the money, the whole situation grows
18 out of proportion. She emphasized that this process needs to be streamlined and
19 user friendly, noting that there is insufficient information at this time. Stressing
20 that she does not want staff to return with a complex organizational system that is
21 literally absorbing the money to maintain the system that is going to babysit the
22 money. She suggested that a time frame be included, following which the money
23 can be utilized in another area, adding that she prefers more flexibility than
24 Commissioner Heckman and Commissioner Johansen.
25

26 Observing that he has been provided with a great deal of consensus, Chairman
27 Maks thanked the Commissioners for their assistance. He suggested that staff
28 discuss the issue with the City Attorney and illustrate that the Planning
29 Commission feels that this should be left within the realm of planning, adding that
30 counsel may be able to provide the necessary guidelines.
31

32 Commissioner Johansen suggested that if the changes that come back do not
33 relate to the Development Code there is still the option to approve the document
34 that has been presented tonight.
35

36 Chairman Maks reminded Commissioner Johansen that the entire basis for this
37 document is the in lieu fee process. He observed that he would like to implement
38 this simply because this in lieu fee is not currently being charged to applicants.
39

40 Commissioner Johansen stated that while he realizes this is important, it is not a
41 major issue in his opinion.
42

43 Chairman Maks clarified that Commissioner Johansen would like to approve this
44 document at this time, as amended, with Option B and staff direction to come
45 back with necessary changes.
46

1 Commissioner Johansen confirmed that he would support such a motion.

2

3 Commissioner Heckman questioned the situation of the Planning Commission
4 considering the possibility of counsel taking a diversion view from this issue,
5 noting that any decision does require his approval.

6

7 Chairman Maks requested clarification of Commissioner Heckman's position.

8

9 Commissioner Heckman informed Chairman Maks that he is not prepared to
10 move ahead with approval of this document at this time.

11

12 Chairman Maks stated that in the event that counsel determines this can not be
13 done, his intention is to adopt this document as written, stressing that an in lieu
14 fee needs to be collected.

15

16 Commissioner Heckman pointed out that some of the concerns expressed at this
17 Public Hearing might not have been brought to the attention of counsel.

18

19 Mr. Maks agreed that this is a possibility.

20

21 Mr. Naemura reiterated that the Comprehensive Plan and this land use regulation
22 should not express funding policies or priorities in the Capital Improvements
23 Program, which are under the discretion of the political body.

24

25 Chairman Maks noted that TIF Fees and STC Fees both go into Planning, outside
26 of the political influence.

27

28 Mr. Naemura clarified that an expression of priorities or policies in the Capital
29 Improvements Program spending that money should not be found in the land use
30 regulations and explained that this opens the door to a land use decision for an
31 expenditure of money.

32

33 Chairman Maks questioned the possibility of including this within the code,
34 which is technically not site-specific, but not in the Comprehensive Plan.

35

36 Mr. Naemura advised him that this could not be included within the code, which
37 he referred to as the chief land use document.

38

39 Chairman Maks expressed appreciation to Mr. Naemura for his input.

40

41 Commissioner Heckman requested clarification of his understanding that the
42 Planning Commission will have no control over where these in lieu fees are spent.

43

44 Chairman Maks questioned whether a provision is made within the code
45 regarding money collected for street trees, suggesting that the situation is
46 comparable with this in lieu fees. On question, he informed Mr. Naemura that he

1 is not referring to the PUD scenario, adding that there is a provision adopted
2 within the past year for the collection of money for the City of Beaverton to take
3 care of street trees.

4
5 Mr. Naemura commented that although he has not fully explored this issue, his
6 first impression is that this does not involve a capitol improvement.

7
8 Chairman Maks pointed out that this is money that is derived and issued by code
9 with a direct relationship to that development, which he feels is comparable to
10 mandating that utilities be placed underground or an in lieu fee submitted.

11
12 Mr. Sparks observed that this differs because it involves conditions of approval
13 for a specific location.

14
15 Chairman Maks questioned how it differs from the intent in this situation,
16 observing that the difference is in timing.

17
18 Mr. Sparks expressed his opinion that the broader definition, in terms of a general
19 location, is the difference in this situation, and Chairman Maks concurred with
20 this statement.

21
22 Mr. Naemura pointed out that as a result, the Capitol Improvement Plan will
23 affect some of the desired undergrounding, an issue which the City Attorney is
24 isolating as problematic.

25
26 Observing that all of the necessary information to make a competent decision is
27 still not available, Commissioner Voytilla **MOVED** and Commissioner Johansen
28 **SECONDED** a motion that TA 2000-0003 – Utility Undergrounding Text
29 Amendment be continued to a date certain of June 7, 2000, for the purpose of
30 staff coming back to respond to the issue of priorities and concerns of keeping the
31 money where the impact was created, either specifically or generally, and with
32 regard to proper planning consequences.

33
34 Motion **CARRIED** unanimously

35
36 **MISCELLANEOUS BUSINESS:**

37
38 Mr. Sparks announced that Senior Planner Bill Roth has recently become the
39 proud father of two new baby daughters, Savannah and Sydney on Monday, April
40 3, 2000, adding that the entire family is doing well.

41
42 Observing that Commissioner Wolch will be attending his final meeting on April
43 19, 2000, Chairman Maks reported that the one Public Hearing scheduled for this
44 otherwise work session is for CUP 99-00032 – Home Depot, which will be
45 continued to July 12, 2000. Noting that Commissioner Johansen will be absent
46 and Commissioner Dunham will be late, he mentioned that he needs a quorum in

order to open and continue the Public Hearing properly, following which will be the work session. He requested that Mr. Naemura attend this work session to provide counsel for the issues that he expects will be covered.

Mr. Sparks suggested that this information also be e-mailed to Planning Director Irish Bunnell.

Chairman Heckman questioned whether everyone had filed his or her Ethics Commission Statements and Chairman Maks emphasized that this must be done to avoid assessment of a fine.

The meeting adjourned at 9:47 p.m.

CALENDAR:

April	26	7:00 p.m.	Public Hearing	CPA 98-00011	ANNEXATION POLICTY TEXT
				TA 99-00010	AMENDMENTS
May	3	7:00 p.m.	Public Hearing	TPP 99-00008	WATERHOUSE 5 SUBDIVISION
				SB 99-00010	MODIFICATION
	10	5:00 p.m.	Public Hearing	CUP 2000-0008	FOUNTAIN COURT
			Public Hearing	CUP 2000-0001	BEARD COURT CUP
			Public Hearing	TPP 2000-0001	BEARD COURT TPP
			Public Hearing	RZ 2000-0001	BEARD COURT REZONE
			Public Hearing	RZ 2000-0002	SEXTON MT VILLAGE/ HAGGEN'S STORE
			Public Hearing	RZ Q000-0003	SEXTON PLACE TOWNHOMES
			Public Hearing	CUP 2000-0002	HAGGEN'S STORE 24-HOUR
			Public Hearing	CUP 2000-0003	SEXTON MTN VILLAGE PUD
	17	6:00 p.m.	Public Hearing	CUP 2000-0001	BEARD COURT CUP
			Public Hearing	TPP 2000-0001	BEARD COURT TPP
			Public Hearing	RZ 2000-0001	BEARD COURT REZONE
			Public Hearing	RZ 2000-0002	SEXTON MT VILLAGE/ HAGGEN'S STORE
			Public Hearing	RZ 2000-0003	SEXTON PLACE TOWNHOMES
			Public Hearing	CUP 2000-0002	HAGGEN'S STORE 24-HOUR OPERATION
			Public Hearing	CUP 2000-0003	SEXTON MTN VILLAGE PUD
			Public Hearing	SV 2000-0001	SW 166 TH AVENUE STREET VACATION
		7:00 p.m.	Public Hearing	RZ 99-00020	CORNELL ROAD REZONE
	18	5:00 p.m.	Public Hearing	CUP 2000-0001	BEARD COURT CUP
			Public Hearing	TPP 2000-0001	BEARD COURT TPP
			Public Hearing	RZ 2000-0001	BEARD COURT REZONE
			Public Hearing	RZ 2000-0002	SEXTON MT VILLAGE/ HAGGEN'S STORE
			Public Hearing	RZ Q000-0003	SEXTON PLACE TOWNHOMES
			Public Hearing	CUP 2000-0002	HAGGEN'S STORE 24-HOUR OPERATION
			Public Hearing	CUP 2000-0003	SEXTON MTN VILLAGE PUD
June	7	7:00 p.m.	Public Hearing	TA 2000-0003	UTILITY UNDERGROUNDING TEXT AMENDMENT (cont. from April 5, 2000)
July	12	7:00 p.m.	Public Hearing	CUP 99-00032	HOME DEPOT (cont. from April 19, 2000)